

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 3969 of 2015 (U)

PETITIONER(S):

**VINOD JOHN, S/O.JOHN, AGED 42 YEARS,
PULIKAKANDATHIL HOUSE, VAZHITHALA, THODUPUZHA,
IDUKKI DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
ERNAKULAM PIN - 682 030.**
- 2. THE REVENUE DIVISIONAL OFFICER,
MOOVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686 661.**
- 3. THE SUB INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
ERNAKULAM DISTRICT, PIN - 686 691.**

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 3969 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT R.D.O.
DATED 23-1-2015 AS NO.A2-519/15.**

**EXT.P2: TRUE COPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT TO
THE 2ND RESPONDENT ALONG WITH SEIZURE MAHAZAR PREPARED BY
THE 3RD RESPONDENT DATED 30.1.2015.**

**EXT.P3: TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR,
KOTHAMANGALAM DATED 22.2.2013.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.3969 of 2015

Dated this the 12th day of February, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing Registration No.KL-35B/3825, which was hired for carrying some ordinary earth in connection with the construction activities of Mathirippally St. Sebastian's Church at Kothamangalam on 31.01.2015. The vehicle was seized by the 3rd respondent alleging authorised filling up of 'paddy land' as per Ext.P2 proceedings. According to the petitioner, the activity was being pursued strictly in conformity with Ext.P1 permit/sanction given by the 2nd respondent and that the property concerned herein was never a 'paddy land' or 'wet land', so as to have attracted the provisions of Act 28 of 2008. Immediate interference of the Court is sought for by way of the present writ petition.

2. Heard the learned Government Pleader as well, who submits on instructions that the property concerned herein is not included as a 'paddy land' or 'wetland' as defined under Section 2 (xii) or 2(xviii) of Act 28 of 2008 and that the entry therein

shows that the property was converted three years prior to the commencement of Act 28 of 2008. The law stands declared by this Court that, if the property was not remaining as a 'paddy land' or 'wet land' as on the date of commencement of the Act, provisions of Act 28 of 2008 cannot be attracted.

3. In the said circumstances, the petitioner, if at all has committed any offence, it could only be with reference to the provisions of MMDR Act/KMMC Rules. The petitioner is entitled to have compounded the offence as well.

4. The learned counsel for the petitioner submits that the petitioner might be permitted to compound the offence. It is settled law that, once the offence is compounded, no prosecution proceedings will lie in view of the ruling rendered by this Court as reported in 2013 (**2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**).

5. After hearing both the sides, the petitioner is set at liberty to compound the offence in view of the enabling provision, particularly under Section 23A of the Act and Rule 60A of the Rules.

6. Coming to the extent of amount to be satisfied as

compounding fee, the Rules specifically stipulate that any offence under the Rules can be compounded subject to the satisfaction of the maximum fine prescribed under the Rules, which is stated as Rs.5,000/-. But in respect of the transportation of sand/earth without any valid pass/sanction, it is stated as an offence under the 'Act' itself by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the Act itself. The maximum fine in respect of such offence prescribed under the Act is stated as **Rs.25,000/-**. It was in the said circumstance, that this Court was passing orders enabling the party to have interim custody of the vehicle, on satisfaction of a sum of Rs.25,000/-, also directing the concerned respondent to consider the application for compounding, if any.

7. In view of the willingness expressed from the part of the petitioner to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the 3rd respondent to compound the offence, if the petitioner satisfies a sum of **Rs.25,000/-**. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle shall be released to the petitioner forthwith. It is made clear that once the offence alleged against

the petitioner is compounded, no prosecution proceedings shall be pursued against him.

The Writ Petition stands disposed of accordingly.

The petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 3rd respondent, for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE**

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